

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

IN RE: December 28, 2004)
Submission Of Supplemental)
Petition Sheets In Support Of)
The Video Lottery Terminal)
Initiative of 2004.)

RESPONDENTS:)

BOEE NO. 05-01

The Citizens Committee for the)
D.C. Video Lottery Terminal)
Initiative;)
Pedro Alfonso;)
Vickey Wilcher;)
Margaret Gentry; and)
Johnny Clinton Hyatt.)

ORDER TO SHOW CAUSE

UPON CONSIDERATION OF:

The submission by Johnny Clinton Hyatt on December 28, 2004, of 397 petition sheets¹ requesting that the Board of Elections and Ethics (the "Board") hold an election on The Video Lottery Terminal Initiative of 2004 ("Initiative Measure No. 68");


The affidavit of Johnny Clinton Hyatt, dated December 28, 2004, attesting that he has been designated as "an additional proposer of Initiative Measure No. 68";

The request by the Board's General Counsel, both in writing on December 29, 2004 and orally on January 3, 2004, for documentation supporting Johnny Clinton Hyatt's authority to file the aforementioned petition sheets;

The response of Johnny Clinton Hyatt, by counsel, dated January 5, 2005, to the Board's General Counsel's request;

The written communications, dated December 27, 28, and 29, 2004, from Pedro Alfonso and Vickey Wilcher [the original proposers of Initiative Measure No. 68, and the former Chairman and Treasurer, respectively, of the Citizens Committee for the D.C. Video Lottery Terminal Initiative ("Committee")], and Margaret Gentry (the former Custodian of Records of the Committee), that they neither authorized nor approved the December 28, 2004 submission to the Board by Johnny Clinton Hyatt, the petition circulation effort, or related activities and expenditures associated therewith;

¹ On December 28, 2004, Johnny Clinton Hyatt represented that he was submitting 396 petition sheets. However, a subsequent count by the Board reflects that 397 petition sheets were in fact submitted.



The information provided to the Board indicating that radio advertisements to recruit individuals to circulate petitions in support of Initiative Measure No. 68 were broadcast in December 2004 under the auspices of the Committee;

The Board's August 3, 2004 rejection, as numerically insufficient, of the petition filed on July 6, 2004, in support of Initiative Measure No. 68;

The affirmance of the Board's rejection on September 28, 2004, by the District of Columbia Court of Appeals, which, pursuant to D.C. Official Code §1-1001.08(o)(2), is final and not appealable;

The Board's regulation, which provides that: "The proposer(s) of an initiative or referendum measure which failed to qualify for the ballot due to the numerical insufficiency of the petition must commence the respective process anew." D.C. Mun. Regs. tit. 3, §1012.3; and,

The Board's regulation, which provides that: "In the event that any proposer of an initiative or referendum measure becomes unable or unwilling to act prior to submission of the petition for filing, the Board may, based on the evidence presented and for good cause shown, consider another registered qualified elector as a substitute or additional proposer for the measure." D.C. Mun. Regs. tit. 3, §1015.1;




AND IT APPEARING TO THE BOARD THAT:

The Committee, or individuals purporting to act on behalf of the Committee, advertised, solicited and collected signatures, and incurred expenditures in support of Initiative Measure No. 68 after the petition was submitted by the proposers and rejected by the Board, and the Board's ruling was affirmed by the District of Columbia Court of Appeals;

There is conflicting evidence regarding the authority of Johnny Clinton Hyatt to act on behalf of the Committee in soliciting and collecting signatures following the submission and rejection of the July 6, 2004 petition filed in support of Initiative Measure No. 68, incurring expenditures in support of that effort, and presenting the December 28, 2004 submission to the Board;

The radio advertisements, the solicitation and collection of signatures in support of Initiative Measure No. 68, and the submission of those signatures to the Board on December 28, 2004 occurred subsequent to the July 6, 2004 filing of the petition with the Board, the Board's rejection of that petition on August 3, 2004, and the affirmance of the Board's rejection by the District of Columbia Court of Appeals on September 28, 2004;



Such post-rejection activities may violate the applicable laws and regulations and compromise the integrity of the District of Columbia electoral process. *See* D.C. Official Code §§1-1001.14 and 1-1001.16; *see* D.C. Mun. Regs. tit. 3, §1012.3;

The Committee, or individuals purporting to act on behalf of the Committee, continued to make expenditures to support the qualification of Initiative Measure No. 68 for ballot access subsequent to the July 6, 2004 filing of the petition with the Board, the Board's rejection of that petition on August 3, 2004, and the affirmance of the Board's rejection by the District of Columbia Court of Appeals on September 28, 2004;


Such post-rejection expenditures may violate the applicable laws and regulations and compromise the integrity of the District of Columbia electoral process. *See* D.C. Official Code §§1-1001.14, 1-1101.01(7), 1-1102.01, and 1-1102.06; *see* D.C. Mun. Regs. tit. 3, §§3000 and 3700; and,

The unilateral designation of Johnny Clinton Howard as "an additional initiative proposer" may violate the applicable regulations. *See* D.C. Mun. Regs. tit. 3, §1015.1.

THEREFORE, IT IS HEREBY ORDERED that the Committee, Pedro Alfonso, Vickey Wilcher, Margaret Gentry, and Johnny Clinton Hyatt appear and show cause, if any there be, why the Board should not find that the Committee and/or the individual respondents have violated the election and campaign finance laws of the District of Columbia as set forth herein; and it is

FURTHER ORDERED that the Committee, Pedro Alfonso, Vickey Wilcher, Margaret Gentry, and Johnny Clinton Hyatt appear and show cause, if any there be, why the Board should not assess penalties against the Committee and/or the individual respondents for the violations, pursuant to D.C. Official Code §1-1103.05(b)(1), and take any other action as the Board may deem appropriate.

An evidentiary hearing on this matter will be held on Tuesday, January 18, 2005, at 10:00 a.m. at 441 4th Street, NW, Suite 250N, Washington, D.C., 20001. Any written submissions to be considered by the Board must be submitted no later than close of business on January 13, 2005. Any party may be represented by counsel for these proceedings. Failure to appear at the hearing may result in an adverse finding, the assessment of penalties, and such other action as the Board may deem appropriate.



Wilma A. Lewis
Chairman, Board of Elections and Ethics

Dr. Lenora Cole
Member, Board of Elections and Ethics

DATE: January 6, 2005

Charles R. Lowery, Jr.
Member, Board of Elections and Ethics